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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 JAMES A. MOORE,

12 Plaintiff,

13 vs.

14 DERRICK OLLISON,

15 Defendant.

CASE NO. 07cv141-IEG(AJB)

Order Granting Motion for Relief from  
Judgment [Doc. No. 20]; Setting Time  
for Petitioner to File Objections to  
Report and Recommendation

16 Petitioner moves the Court for relief from judgment pursuant to Fed. R. Civ. P. 60(b).  
17 Petitioner indicates he did not receive a copy of Magistrate Judge Battaglia's February 27, 2008  
18 Report and Recommendation, and was therefore unable to file objections before the Court entered  
19 its order and judgment denying the petition on April 15, 2008. The motion is GRANTED.

20 Pursuant to Fed. R. Civ. P. 60(b)(6), the Court may grant relief from final judgment for  
21 "any other reason that justifies relief." "A party seeking to re-open a case under Rule 60(b)(6)  
22 'must demonstrate both injury and circumstances beyond his control that prevented him from  
23 proceeding with the prosecution or defense of the action in a proper fashion'." Delay v. Gordon,  
24 475 F.3d 1039, 1044 (9<sup>th</sup> Cir. 2007) (quoting Community Dental Svc. v. Tani, 282 F.3d 1164, 1168  
25 (9<sup>th</sup> Cir. 2002)).


26 Here, Petitioner has shown both injury and circumstances beyond his control. Pursuant to  
27 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b)(3), the Court reviews *de novo* only those  
28 portions of a Report and Recommendation to which objections are made. A failure to object to a

1 magistrate judge's finding of fact waives such issue on appeal. Robbins v. Carey, 481 F.3d 1143,  
2 1146-47 (9<sup>th</sup> Cir. 2007). In addition, although the appellate court is not limited in its *de novo*  
3 review of legal issues raised by the petition, Robbins, 481 F.3d at 1147, Petitioner was deprived of  
4 the opportunity to object and argue any points of error for this Court to consider prior to entry of  
5 its April 15, 2008 order. It was an error of the Clerk, and not any fault of Petitioner, which resulted  
6 in Petitioner not receiving the Report and Recommendation in a timely manner.

7 Therefore, the Court GRANTS Petitioner's motion for relief from judgment and  
8 VACATES the April 15, 2008 order and judgment denying the Petition. Petitioner is granted until  
9 August 29, 2008 to file objections to the Report and Recommendation. Respondent may file a  
10 reply to those objections on or before September 12, 2008.

11 **IT IS SO ORDERED.**

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13 **DATED: July 21, 2008**

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15 IRMA E. GONZALEZ, Chief Judge  
16 United States District Court  
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